



STEVE COOLEY  
LOS ANGELES COUNTY DISTRICT ATTORNEY

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February 3, 2009

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**RECOMMENDATION TO PROVIDE LEGAL REPRESENTATION FOR A DEPUTY  
DISTRICT ATTORNEY IN THE DISTRICT ATTORNEY'S OFFICE FOR AN  
ADMINISTRATIVE PROCEEDING BROUGHT BY THE STATE BAR  
(ALL DISTRICTS) (3-VOTES)**

SUBJECT

A recommendation to direct County Counsel to secure legal representation for a Deputy District Attorney in the District Attorney's Office.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the administrative proceeding is brought on account of an act or omission in the scope of the deputy district attorney's employment as an employee of the County of Los Angeles in the District Attorney's Office.
2. Find that the defense of the deputy district attorney would be in the best interests of the County.
3. Find that the deputy district attorney acted, or failed to act, in good faith, without actual malice, and in the apparent interests of the County.
4. Direct County Counsel to secure legal representation, at the County's expense, for one deputy district attorney in the District Attorney's Office.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS:

I seek your Board's approval of my recommendation to provide legal representation for a deputy district attorney who has been requested to respond to a State Bar inquiry regarding alleged violations of the California Rules of Professional Conduct. This inquiry was generated by an unpublished opinion issued by the Court of Appeal of the State of California, Second Appellate

District, Division Eight, on October 22, 2008 in the case of The People of the State of California v. Mark Alan Broughton, B196573. The court reversed the conviction of the defendant after finding trial court error and prosecutorial misconduct.

I have reviewed the facts and circumstances surrounding this case. The deputy district attorney has been a prosecutor with the Los Angeles County District Attorney's Office since January 1998. At the time of the jury trial of defendant Broughton, the deputy district attorney was employed by the County of Los Angeles and was acting within the course and scope of his/her employment. My review reveals no indication that the deputy district attorney acted in bad faith or with actual malice. Rather, it appears that the deputy district attorney acted in good faith, without actual malice and in the apparent interests of the People of the State of California and the County of Los Angeles. Further, I believe that the defense of this deputy district attorney would be in the best interests of the County.

#### FISCAL IMPACT/FINANCING

The costs for providing legal representation should not exceed \$10,000. Funds will be allocated from the District Attorney's existing operating budget. If the costs increase, they will continue to be allocated from the District Attorney's existing operating budget.

#### FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Government Code Section 995.6 provides that the County is not required to provide for the defense of an administrative proceeding brought against a County employee, but the County may provide for such defense if:

- (a) The administrative proceeding is brought on account of an act or omission in the scope of his employment as an employee of the public entity; and
- (b) The public entity determines that such defense would be in the best interests of the public entity and that the employee acted, or failed to act, in good faith, without actual malice and in the apparent interests of the public entity.

#### CONTRACTING PROCESS:

Contracting process requirements are not applicable.

#### IMPACT ON CURRENT SERVICES (OR PROJECTS):

None.

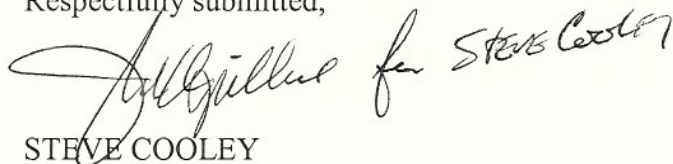


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CONCLUSION:

I recommend that your Board find that the deputy district attorney acted in good faith, without actual malice, and in the apparent interests of the County and that his/her representation before the State Bar is in the best interests of the County. I further recommend that your Board direct County Counsel to secure legal representation for the deputy district attorney at the County's expense.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "J. Gilliland for Steve Cooley".

STEVE COOLEY  
District Attorney

sjm/lo

c: William T Fujioka  
Chief Executive Officer

Raymond G. Fortner  
County Counsel

Sachi A. Hamai  
Executive Officer